Independent Television

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 20, 1995

The Honorable William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Re: MM Docket No. 94-123

EX PARTE COMMUNICATIONS

Dear Mr. Caton:

This is filed on behalf of the Association of Independent Television Stations, Inc., to provide two copies of the attached letter sent today to the Chief, Mass Media Bureau with respect to the above referenced proceeding. Copies also were provided to the Chairman and each Commissioner.

Very truly yours,

James J. Popham
Vice President, General Counsel

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List ABCDE

INTV Association of Independent Television Stations, Inc.
1320 Nineteenth St., N.W., Suite 300, Washington, D.C. 20036 • (202) 887-1970/Fax (202) 887-0950

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

July 20, 1995

Mr. Roy Stewart
Chief
Mass Media Bureau
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

RE: In re the Prime Time Access Rule
MM Docket No. 94-123
Written Ex Parte Communications

Dear Mr. Stewart:

Your staff has asked several questions regarding the impact on independent stations that would accompany a repeal of the Prime Time Access Rule. The following responds to those questions.

At the outset, INTV believes strongly that there are sound policy reasons for keeping the rule, or at the very least a long term transition. As we have documented throughout this proceeding, independent stations and stations affiliated with new emerging networks rely heavily on top quality programming during the one hour access period. Eliminating the Prime Time Access Rule will make it difficult, if not impossible, to secure the rights to these shows. The competitive posture of these stations, which are predominantly UHF facilities, will decline. Moreover, the broadcast programming market is undergoing rapid change.

- With the demise of the financial interest and syndication rules, the networks will be free to compete with the existing first-run program suppliers (*e.g.*, King World) for access slots on their affiliated stations. Indeed, they will be able to control the key access period time slots on their owned and operated stations. The networks already control three out of four prime time hours, and they will soon be competing for the fourth.

- The demise of the financial interest and syndication rule means that for the first time, the big three networks will be in control of the sale of "off-network" programs. There is no question that network controlled off-network distribution will result in this programming ending up on their owned and operated stations and the largest VHF affiliates in the top 50 markets. Independents and emerging network affiliates will be frozen out.

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- Relaxation of the national multiple ownership rules will dramatically affect the syndication market, as the big three networks increase the number of owned and operated stations across all markets. They will have greater control of all program slots, including the "access period."

- At the same time, new off-air networks are in the formative stages. These networks will be built on the foundation of UHF independent stations. Access to top quality off-network programming is important during the roll out of the new networks. It keeps the new affiliates economically viable during the roll out, which will take years to accomplish, and provides an important "lead-in" audience for new network programming.

- Both sides agree that programming prices for off-network programs will increase. Our comments estimated a 38% increase for Grade "A" off-network shows and a 28% increase in Grade "B" off-network programs. In addition, the ratings loss associated with repeal will result in a revenue loss of $1.45 to 2.1 million annually per station. This revenue squeeze will hit at a time when stations will be spending millions to convert to digital television and at a time when the FCC intends to impose new children's programming requirements.

Taken together, these facts demonstrate that the FCC should move cautiously in repealing the Prime Time Access Rule. If the Commission truly wants to see increased competition at both the local and network level, then it should not repeal the rule until it has made an assessment of the changes that will take place in the programming market over the next five years. It should also give new and emerging networks an opportunity to get off the ground. These fundamental policy considerations argue against a "flash cut repeal" or short term sunset.

Apart from the policy considerations, there are significant market-based reasons that justify a long term study of the rule before any phase out is ordered. The rule has been in effect for over two decades and an immediate repeal will have devastating consequences on local stations.

All parties to this dispute can stipulate to one key issue. No one doubts that eliminating the off-network portion of the rule will result in significant price increases for off-network programming. Indeed, this is the central thesis of Disney's position. As our comments document, price increases for Grade "A" off network programming are expected to increase by 38%. Prices for Grade "B" off-network programming are expected to increase by 28%.

The issue, therefore, is how can a station adapt its programming budgets to adjust for what surely will be a rapid increase in program prices. On this point it is worth noting that since 1978, the FCC has always given stations at least two years advanced notice to prepare for changes in the top 50 markets. *In re Changes in PTAR Markets*, 67 FCC 2d. 1532, 1538 (1978).

Based on discussions with affected stations, INTV would request that the Commission consider what would happen if the rule were repealed immediately.

Top quality off-network programming is generally sold well in advance of its actual air date. It is common for top quality off-network shows to be marketed two years in advance of the actual air date. For example, Buena Vista began marketing "Home Improvement" in May 1993 for a fall 1995 broadcast date. In fact, by October 1993, "Home Improvement" cleared 59 markets. *Electronic Media*, October 4, 1993 at 40. The marketing of "Seinfeld" commenced in early March 1994 with a broadcast date set for the fall of 1995. Even though the show was marketed approximately 18 months in advance, there was a question why the roll out was delayed. The syndicator explained that stations were pre-occupied with retransmission negotiations and the economy was weaker in 1993. *Broadcasting & Cable*, March 7, 1994 at 14. Based on discussions with several stations, they expect new off-network shows for a fall 1997 air date to commence marketing this fall. For example, I have been told that "Living Single" is now being sold for a 1997 broadcast date.

As for renewals, I have been advised that renewals are essentially ongoing. For example, stations are now negotiating for the second cycle, *i.e.*, renewal of "Roseanne." The second cycle of "Roseanne" will begin in 1998. Off-network shows come up for renewal on an annual basis depending on when they were sold initially and the length of their initial contract term. Programs such as "Family Matters" and "Empty Nest" are set for a 1997 renewal date.

INTV believes the FCC should be concerned about the financial adjustments that must be made by independent stations, including those affiliated with the emerging networks, if there is an immediate repeal of the rule. Because top quality off-network programming is sold two years in advance, sunsetting the rule in 1997 is tantamount to an immediate repeal. Top quality Grade "A" off-network programs entering the market today -- which are available for off-network broadcasts in 1997 -- would be sold as if the Prime Time Access Rule were repealed.

The short term implications on UHF television stations, including those that will form the new networks, will be significant. While television stations contract for top quality off-network programming 18-24 months in advance, actual payment is generally made at the time a program is broadcast. Assuming *arguendo* that the FCC sunsets the rule in 1997, INTV anticipates the following based on conversations with stations.

Depending on the reaction by syndicators, prices could increase immediately. Some syndicators may require a station to pay an up front "deposit" at the time the program contract is executed. It is our understanding that at least one syndicator marketing an off-network show for a 1997 broadcast date is asking for a 10% deposit up front.

Stations seeking to acquire programming now for a 1997 broadcast date know that their programming costs for off-network programs will increase significantly -- 28 to 38%. (This would also apply to existing programs such as "Roseanne" for which stations are negotiating renewals where the renewal cycle begins after 1997.) To compensate for such a hefty increase in programming costs, stations will have to cut back in other areas <u>now</u> to insure that there are sufficient funds to pay the price increases. On this point there are several considerations.

While it is theoretically possible that advertising revenue could increase over the next few years, significant increases are unlikely. Advertising revenues will certainly not increase 20-30%. This is especially true given the uncertain state of the general economy.

As a result, a station anticipating a 28-38% increase in access period programming costs will have to cut those areas where it has discretionary control over costs. For example, a station may decide to cut expenses by 10% for the remaining part of 1995 and an additional 10% in 1996. Such hefty cuts will have a negative impact on overall station operations.

Cutbacks in station operations will not be applied evenly across the board. The costs associated with syndicated programming now being shown on independent stations are essentially fixed. These program costs are a function of contracts that have already been executed. Stations are required to meet these obligations.

In the short term, a station will most likely cut back in those areas where it has discretion. Budgets for new equipment may be reduced. This is a frightening prospect given the FCC's plans to accelerate the conversion to digital television. Local programming will also suffer. Stations are able to control these costs. As INTV documented in its comments, there is a link between access period revenues and the budgets for news and public affairs. Increased costs in access period programming will affect these budgets. For those stations planning to launch a newscast -- which requires a tremendous up front investment -- these plans will most likely be delayed or scrapped. A final option will be to reduce the labor force.

A final option will be that stations unable to cover the increased costs will simply not bid for quality programming. Because they will be priced out of the market, stations will stay within their budgets and bid for lower quality shows. Of course this is a dangerous strategy. The end result is a loss in ratings and further declines in revenues.

Independent stations, including those affiliating with new emerging networks, need time to adjust to an environment where programming costs will escalate. The short term impact on station budgets will be staggering. Our concern is heightened because UHF independent stations, which will form the basis for the new networks, are generally the weakest stations in each market. Time is needed to spread these costs out and minimize disruption.

Because programming commitments are made two years in advance, a transition period which sunsets the rule in two years will not give stations enough time to make adjustments. INTV believes that a longer transition period is absolutely necessary to accommodate the market changes that will accompany a repeal of the rule.

In summary, INTV believes that there are sound policy reasons for not repealing the rule. We would urge the FCC to consider them. Even if the FCC finds no policy basis for the rule, it is simply unconscionable for the Commission to subject the weakest stations in a market to short term financial disruptions in addition to a significant revenue loss associated with the rule's repeal. Increased programming costs, coupled with an estimated $1.4 to $2.1 million loss due to a ratings decline, will seriously threaten this segment of the free, off-air television industry. Such a result is inconsistent with any notion of the public interest.

Sincerely,

David L. Donovan

David L. Donovan
VP/Legal & Legislative Affairs

cc: Office of the Secretary
The Honorable Reed Hundt
The Honorable James Quello
The Honorable Andrew Barrett
The Honorable Susan Ness
The Honorable Rachelle Chong

The selling of 'Seinfeld'

Show expected to go for $250,000 per episode in New York

By Steve McClellan

Sensing a station marketplace that is significantly stronger than that of a year ago, Columbia TriStar Television Distribution has officially launched into syndication the slice-of-life sitcom *Seinfeld*.

CTTD President Barry Thurston said the stations in the New York market were given the off-network *Seinfeld* presentation last week, and the syndicator expected to let them know the floor price for the weekly license fee in the market last Friday, or possibly today (March 7).

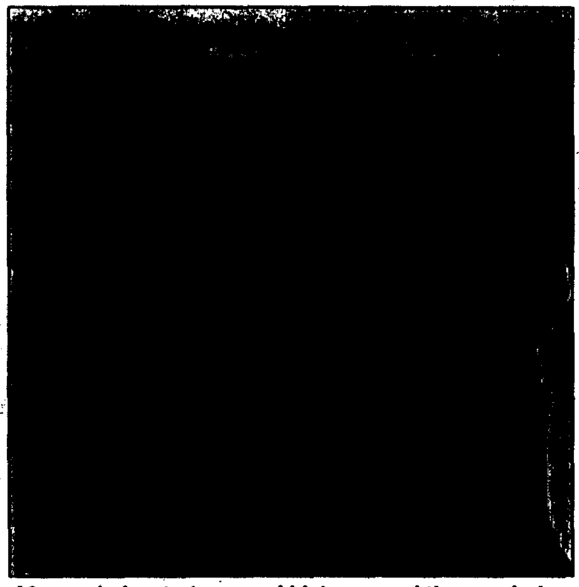
Thurston said the company is selling and pricing the show for the prime time access period (7-8 p.m.), one of the most valuable local station dayparts.

Thurston won't rule out the possibility of group deals, but he said the company's intention is to sell the show market by market, working from the larger markets on down. The company will be making pitches to Los Angeles stations this week.

The basic deal points for the show, available in fall 1995:

- A weekly license fee for a minimum package of 108 episodes over 182 weeks, with stations committed to all future network production.
- One minute of barter in addition to the weekly fee.
- A sixth weekend barter play (3 minutes national/3.5 minutes local) during the first two years.

Every season the show stays on the network past four seasons adds another six months to the first cycle of the package. There is also a one-time 10% escalator clause in the weekly license fee beyond the first 3.5 years.



After a shaky start, several hiatuses and time-period moves, 'Seinfeld,' once a cult show, has become a bona fide hit on Thursday nights. The entire evening, in fact, is a winner for NBC, which said last week it has renewed the night's 8-10 p.m. block for the '94-'95 season. 'Mad About You,' 'Wings,' 'Seinfeld' and 'Frazier' have averaged a 15.9 rating and 24 share in households—a 20% increase over the time period a year ago.

Thurston said that stations will not be allowed to double-run the program. He said the company was concerned about overexposing the show and possibly diluting its long-term potential.

There are no provisions for resting the show during the first syndication cycle. The program is cut for 6.5 minutes of commercials, with the stations retaining 5.5 minutes in the weekday cash-barter plays.

In New York, all three independents are said to be interested in the program, which is set in New York. High interest was reflected in the fact that stations usually eager to put their spin on things were reluctant to talk about the show or the bidding. "It's real sensitive right now," said one station source.

The program is expected to draw top dollar—or close to it—in the top 25 markets, where most of the show's revenue will be generated. Several sources in the New York market estimated the winning bid there may come close to or top the $250,000 a week that WWOR-TV paid for *Home Improvement*, the other key 1995 sitcom. The selling of that show, distributed by Buena Vista Television, is almost done, with more than 75% of the country cleared.

"We believe *Seinfeld* will be the sitcom franchise of the '90s," said Thurston. Rep executives, who also were pitched last week, agreed that the show was one of the two hottest sitcom prospects for the second half of the '90s, the other being *Home Improvement*. "Is it the franchise that Barry makes it out to be? That remains to be seen. It should do pretty well," said one rep executive.

Thurston chided those in the press who portrayed the launch of *Seinfeld* as "delayed." Last year, he said, stations were preoccupied with retransmission talks with cable operators. Also, the broadcast economy was weaker, he said. "Stations finished a strong fourth quarter and a good year, and the first quarter is even stronger," he said. "The future looks bright. We listened to the stations, and they said our timing on this one was right." ■

[illegible] markets, and M[illegible] will have all top 20 markets signed. The network [illegible] January 1995, he added, and predicted that Paramount [illegible] new affiliates nearly weekly until the project meets its 80% clearance goal.

The Paramount Network is scheduled to debut with four hours of programming over two nights, with *Star Trek: Voyager* as its flagship program. —SC

Fifth Network Status Report

	Affiliates	Coverage
Paramount	31	44%
Warner	19	39%*

*Warner says its coverage leaps to 72% when cable coverage of superstation WGN-TV Chicago is factored in.

THE OFF-NETWORK MARKETPLACE

‘Simpsons,’ ‘Home’ pick up top clearances

By THOMAS TYRER
Los Angeles bureau chief

LOS ANGELES—While Columbia Pictures Television Distribution continues to hold “Seinfeld” back from the off-network market, two of its leading competitors continue racking up clearances at top prices.

Buena Vista Television is tracking at between $2.4 million and $2.6 million in cash license fees for “Home Improvement,” and has now cleared that fall 1995 series in 59 markets, representing 61 percent coverage, since starting its off-network sales push last May.

Twentieth Domestic Television is tracking at between $1.3 million and $1.6 million for its animated show “The Simpsons,” which has now cleared 100 markets, representing 80 percent coverage, after launching that fall 1994 comedy into the off-network market with a deal with the Fox Television Stations-owned outlets last November.

Many of the stations clearing “The Simpsons,” particularly Fox-owned stations and FBC affiliates, have also licensed Buena Vista’s “Home Improvement.”

Both Twentieth Domestic Television and Buena Vista Television senior executives say that they expect those stations to package the two off-network hits together as a sitcom block leading into the FBC prime-time lineup.

Of the 59 stations clearing “Home Improvement,” 29 are in the top 50 markets.

A combination of five ABC, CBS and NBC affiliates in the top 50 markets have purchased “Home Improvement,” and in three cases, it has been cleared on a concurrent basis, in which a Big 3 affiliate has agreed to license the Buena Vista show following an abbreviated run on either an FBC affiliate or independent.

That’s what’s happening in Milwaukee, where ABC affiliate WISN-TV has co-licensed “Home Improvement” with FBC affiliate WCGV-TV.

However, Buena Vista President Bob Jacquemin said he would not identify the other two markets for fear of causing any trouble between the affiliate stations and their respective networks.#

[redacted]

[redacted]

Repealing PTAR: Will it